LOO MEE DI

v.

BIORAY CORPORATION (M) SDN. BHD. (FORMERLY KNOWN AS BIO-RAY CORPORATION SDN. BHD.) & 2 ORS.

HIGH COURT MALAYA, KUALA LUMPUR
TUAN LOW HOP BING, JC
[ORIGINATING SUMMONS NO. D5-24-215-94]
5 JANUARY 1995

COMPANY LAW: *Anton Piller order - Order granted ex parte - Whether application should be made inter parte - Whether circumstances exist to justify the granting of the order ex parte.*

COMPANY LAW: *Inspection of documents - Member of company denied access to documents - Whether member of company entitled to inspect documents - Companies Act 1965, ss. 157, 359, 362.*

The plaintiff was a shareholder and an ex-director of the 1st defendant company. A general meeting was held which resolved, *inter alia*, the appointment of new directors to which the plaintiff has no knowledge nor consented. New shares were allotted to the new directors. The plaintiff was later denied access to the documents she was entitled to upon her removal as a director. The plaintiff applied *ex parte* for, and was granted an Anton Piller order on 4 October 1994 ordering the defendants to permit the plaintiff to enter into defendants' premises for the purpose of searching, inspecting, copying, photographing and removing into custody or control of the plaintiff's solicitors any register, book or document of the 1st defendant company. The Counsel for the defendants, at the hearing for determination of the validity of the *ex parte* order, submitted that the plaintiff has failed to disclose a reasonable cause of action and that being the case, the plaintiff should not have been granted the order as the essential prerequisites have not been fulfilled. He further contended that the plaintiff as a member has no express right enforceable on her own.

Held:

[1] Where a company has refused inspection of copies of the minutes, the plaintiff as a member, may obtain an order to compel an immediate inspection of the register of the minute book, pursuant to ss. 157, 359, 362 of the Act.

[2] The plaintiff has made numerous and repeated attempts to gain possession of the documents. The defendants have refused to allow the plaintiff to have sight and/or have possession of the documents. There is a real possibility that the defendant may dispose off the documents, thereby depriving the plaintiff of the opportunity to have sight of the documents before any *inter parte* application could be made. Since there is an undertaking as to damages given by the plaintif, an order in terms of the application should be granted.

[Order in terms of plaintiff's application]

Case referred to:
Lian Keow Sdn. Bhd. v. C Paramjothy & Anor. [1982] 1 MLJ 217 ***(refd)***

Legislation referred to:
Companies Act 1965, ss. 34, 157, 167, 170, 359, 362

For the plaintiff - Alex Chang; M/s. Alex Chang & Co.
For the third defendant - Low Kim Leng (S.C. Chua with him); M/s. Soo Thien Ming & Shahrizat

JUDGMENT

Low Hop Bing JC:

On 4 October, 1994 pursuant to an *ex parte* summons in chambers (encl. 7), the plaintiff was granted an order that the defendants or any persons appearing to be in charge of the premises to permit the persons who serves the order and persons authorised by the plaintiff to enter the premises or part or parts of it situated at or known as:

(1) Bioray Corporation (M) Sdn. Bhd. formerly known as Bio-Ray Corporation Sdn. Bhd., 66, Jalan Athinahappan Satu, Taman Tun Dr. Ismail, 60000 Kuala Lumpur.

(2) Chin Fan Kiong @ Chen Fan Kiong No., 10-2 Medan Setia 2, Plaza Damansara, Bukit Damansara, 50490 Kuala Lumpur.

(3) Tai Ming Kong, No. 33 Jalan Bunga Raya Satu, Taman Suria Jaya, off Jalan Cheras, Kuala Lumpur.

and any other premises disclosed to the plaintiff or his solicitor or otherwise ascertained by the plaintiff as occupied by the defendants together with any out-house, garage or other building which forms part of the same premises and any motor vehicle around or used by the defendants or persons authorised by the defendants at any time between 8.00 a.m. and 8.00 p.m. for the purpose of searching for, inspecting, copying, photographing and removing into custody or control of the plaintiff's solicitors any register book or document ("the document") of the 1st defendant as a company which is required by the Companies Act to be available for inspection. It was also ordered that:

(1) The defendants or any person appearing to be in charge of the said premises or vehicles do permit such search, inspection, copying and photographing to be done and on request to open, for such purposes, any cupboards, drawers, safes, containers, cases and vehicles on or upon the said premises.

(2) The defendants do disclose the identity of all premises and their addresses in the documents specified above.

(3) An affidavit to be affirmed within seven (7) days of executing the order to be obtained stating fully the facts and circumstances of what transpired and to exhibit a list of all documents and articles taken or copied.

(4) All documents or classes of documents which are in the custody of the plaintiff's solicitors.

Meanwhile the validity of the above *ex parte* order was extended to 18 October 1994. On 18 October, 1994, the *ex parte* summons in chambers was scheduled to be heard *inter parte* to determine the validity of the *ex parte* order. The plaintiff is at all material times an ex-director and a shareholder of the 1st defendant.

In opposing the plaintiff's application, it is submitted on behalf of the defendants that the plaintiff has failed to disclose a reasonable cause of action and in failing on that score, the plaintiff should have been granted the Anton Piller order on 4 October 1994, as the essential prerequisites have not been fulfilled and that the originating summons is to be struck out as well.

Learned Counsel for the defendants also submitted that the plaintiff has failed to prove a very strong *prima facie* case. He relied on *Lian Keow Sdn. Bhd. v. C Paramjothy & Anor.* [1982] 1 MLJ 217 and ss. 34, 157, 167 and 170 of the Companies Act 1965. He contended that the plaintiff as a member has no express right which is enforceable on her own.

It is not disputed that the plaintiff is a shareholder as well was an ex-director of the lst defendant. There was a **purported** general meeting which resolved, *inter alia*, that some new directors were to be appointed. The plaintiff has no knowledge of the meeting nor has she consented to any such appointments. New shares were **purportedly** allotted to the new directors.

Upon her removal as a director, the plaintiff was denied access to the documents she was entitled to. Section 157 of the Companies Act 1965 provides for the inspection of minutes books and reads as follows:

> (1) The books containing the minutes of proceedings of any general meeting shall be kept by the company at the registered office of the company, and shall be open to the inspection of any member without charge.
>
> (2) Any member shall be entitled to be furnished within fourteen days after he has made a request in writing in that behalf to the company with a copy of any minutes specified in subjection (1) at a charge not exceeding one ringgit for every hundred words thereof.

On the facts herein, there is, in my judgment a cause of action under s. 157 of the Act. Where a company has refused inspection or to supply copies of the minutes, the plaintiff as a member may, on application, obtain an order to compel an immediate inspection of the register of the minute book, pursuant to s. 157, s. 359, s. 362 of the said Act. Section 359 and s. 362 of the Companies Act 1965 read as follows:

> 359. Inspection of registers.
>
> (1) Any register, minute book or document of a corporation which is by this Act required to be available for inspection shall subject to and in accordance with this Act be available for inspection shall subject to and in acccordance with this Act be avaible for inspection at the place where in accordance with this Act it is kept during the hours in which the registered office of the corporation is accessible to the public.
>
> (2) Any person permitted by this Act to inspect any register, minute book or document of a corporation may make copies of or take extracts from it and any officer of the corporation who fails to allow any person so permitted to make a copy of or take extracts from the register, minute book or documents as the case may be shall be guilty of an offence against this Act.
>
> 362. Court may compel compliance.
>
> (1) If any person in contravention of this Act refuses or fails to permit the inspection of any register, minute book or document, or to supply a copy of any register, minute book or document the Court may by order compel an immediate inspection of the register, minute book or document or order the copy to be supplied.
>
> (2) If any officer or former officer of a company has failed or omitted to do any act, matter or thing which by or under this Act he is or was required or directed to do, the Court on the application of the Register or any member of the company or the Official Receiver or liquidator may by order require that officer or former officer to

> do the act, matter or thing forthwith or within such time as is allowed by the order, and for the purpose of complying with any such order a former officer shall be deemed to have the same status, powers and duties as he had at the time the act, matter or thing should have been done.

It is clear that the plaintiff is an aggrieved party. In addition, the plaintiff, who was one of the two directors of the company, was ousted as a director. The documents specified in the order are necessary to protect her interest i.e. her shareholding in the company, which is in effect a partnership, but incorporated under the Companies Act 1965.

All the relevant documents had been returned to the 3rd defendant by Syarikat Chan and the 3rd defendant has acknowledged receipt of these documents. The 3rd defendant was the last person or officer of the company to be in possession of the documents. The documents show that the registered address to the 1st defendant is that of the 3rd defendant's residential address.

The plaintiff has made numerous and repeated attempts to gain possession of the documents. The defendants have refused to allow the plaintiff to have sight and/or have possession of the documents. There is a real possibility that the defendant may dispose of the documents, thereby depriving the plaintiff of the opportunity to have sight of the documents before any *inter parte* application could be made.

There is an undertaking as to damages given by the plaintiff.

On the foregoing grounds, I made an order in terms of the plaintiff's application with costs and dismiss with costs the application of the 3rd defendant to set aside the order and the originating summons.